

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**



**FILED**

10-27-06  
03:10 PM

Order Instituting Rulemaking to Implement the  
Commission's Procurement Incentive Framework and  
to Examine the Integration of Greenhouse Gas  
Emissions Standards into Procurement Policies.

R. 06-04-009

**REPLY COMMENTS  
OF THE ALLIANCE FOR RETAIL ENERGY MARKETS  
ON FINAL WORKSHOP REPORT**

Gregory S. G. Klatt  
DOUGLASS & LIDDELL  
21700 Oxnard Street, Suite 1030  
Woodland Hills, California 91367  
Telephone: (818) 961-3002  
Facsimile: (818) 961-3004  
Email: [klatt@energyattorney.com](mailto:klatt@energyattorney.com)

Attorneys for the  
**ALLIANCE FOR RETAIL ENERGY MARKETS**

Date: October 27, 2006

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In accordance with the instructions and procedural schedule set forth in the Assigned Commissioner's Ruling ("ACR") of October 5, 2006,<sup>1</sup> the Alliance for Retail Energy Markets ("AREM") respectfully submits the following reply comments on the Commission Staff report entitled *Final Workshop Report: Interim Emissions Performance Standard Program Framework* ("Final Workshop Report").<sup>2</sup>

**I. INTRODUCTION**

Among the many important topics addressed in the Final Workshop Report relating to the design and implementation of an interim greenhouse gas ("GHG") emissions performance standard ("EPS") for load-serving entities ("LSEs"), a topic of particular interest to AREM is the process by which electric service providers ("ESPs") will demonstrate compliance with the EPS. At the workshop, it was recognized that the compliance process contemplated for the large investor-owned utilities ("IOUs") was not appropriate for ESPs and that an "ESP process" would

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<sup>1</sup> Assigned Commissioner's Ruling: Phase 1 Amended Scoping Memo and Request for Comments on Final Staff Recommendations, Oct. 5, 2006, p. 7.

<sup>2</sup> AREM is a California mutual benefit corporation whose members are electric service providers that are active in California's direct access market. The positions taken in this filing represent the views of AREM but not necessarily those of particular members or any affiliates of its members with respect to the issues addressed herein.

need to be created. Notwithstanding the general consensus on this point, however, there is some disagreement as to whether, for purposes of implementing the EPS, it is necessary to require ESPs to submit contracts to the Commission prior to their execution for review and approval, or whether it will be sufficient for ESPs to file regular reports with the Commission demonstrating their compliance with the standard for the applicable reporting period.

AReM is a proponent of the reporting model and, in its post-workshop comments, proposed that ESPs report on their compliance with the EPS (and make any related showings that may be required) as part of their resource adequacy (“RA”) compliance filings.<sup>3</sup> This approach, originally suggested by Constellation NewEnergy, Inc. (“CNE”) at the workshop and described further in CNE’s post-workshop comments, is endorsed by Staff in the Final Workshop Report. Specifically, Staff recommends that the Commission create an ESP process that “comports with their current reporting process.”<sup>4</sup>

In opening comments on the Final Workshop Report filed jointly with CNE,<sup>5</sup> AReM stated its support for Staff’s recommendation and urged the Commission to adopt the ESP process proposed by AReM and CNE.<sup>6</sup> The only other parties to discuss the ESP compliance process in any detail in their opening comments were Pacific Gas and Electric Company (“PG&E”) and, in joint comments, the Natural Resources Defense Counsel (“NRDC”), The Utility Reform Network (“TURN”), the Union of Concerned Scientists (“UCS”), and the Western Resource Advocates (“WRA”).<sup>7</sup>

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<sup>3</sup> Post-Workshop Comments of AReM, July 27, 2006, pp. 4-5.

<sup>4</sup> Final Workshop Report, pp. 41 and 43.

<sup>5</sup> Joint Comments of Constellation NewEnergy, Inc, Constellation Energy Commodities Group, Inc., Constellation Generation Group, LLC, NRG Energy, Inc., Mirant California, LLC, Mirant Delta, LLC, Mirant Potrero, LLC, and the Alliance for Retail Energy Markets (“Joint Commenters Opening Comments”), Oct. 18, 2006, p. 2.

<sup>6</sup> Joint Commenters Opening Comments, pp. 2-4

<sup>7</sup> Southern California Edison (“SCE”) stated its support for staff’s recommendations concerning ESPs. SCE Opening Comments, Appendix, p. 2.

PG&E and NRDC/TURN/UCS/WPA essentially support the ESP compliance process for the EPS being folded into ESPs' existing RA reporting, as AReM and CNE propose. At the same time, however, they either presume or insist that ESPs should demonstrate compliance with the EPS on an up front basis—i.e., before executing a contract that is subject to the EPS. For the reasons discussed below, AReM urges the Commission to reject such an approach as unnecessary and impracticable, and to adopt the ESP compliance proposed by AReM and CNE and endorsed by Staff in the Final Workshop Report.

## **II. IT IS NEITHER NECESSARY NOR PRACTICABLE FOR ELECTRIC SERVICE PROVIDERS TO SUBMIT THEIR CONTRACTS TO THE COMMISSION FOR UP FRONT REVIEW.**

PG&E seems to assume that up front review of contracts is required for the EPS to operate as a “gateway” standard,<sup>8</sup> while NRDC/TURN/UCS/WPA argue that not requiring ESPs to demonstrate compliance with the standard prior to contract execution will open “a significant loophole for noncompliance.”<sup>9</sup> As reflected in the Final Workshop Report, however, neither is the case. When Staff recommended that the compliance process for ESPs comport with their current reporting process, they did so with the knowledge that the reporting requirements currently applicable to ESPs do not prescribe the submission of contracts to the Commission for up front review and approval. Moreover, Staff only “reserved the right” to require ESPs to submit their long-term contracts that are subject to the EPS for up front review.<sup>10</sup> If Staff believed it was necessary to review ESP contracts before execution, either to ensure that the EPS operates as a “gateway” standard as intended or to ensure ESP compliance, the Final Workshop Report would have so stated.

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<sup>8</sup> PG&E Opening Comments, p. 6.

<sup>9</sup> NRDC/TURN/UCS/WPA Opening Comments, p. 7.

<sup>10</sup> Final Workshop Report, p. 41.

Instead, as Staff recognized, all that is necessary is that an ESP report whether it has or has not entered into any contracts that were subject to the EPS (i.e., contracts that had to pass through the gateway) and, for any contract that is subject to the EPS, provide such information about the contract as may be necessary to demonstrate that it complies with the standard (passed through the gateway) or is exempt (was not required to pass through the gateway). This can be done, as AReM and CNE propose, through an addendum to the RA compliance filings that ESPs regularly submit on a monthly and annual basis. If requested, an ESP would provide designated staff with confidential copies of any contracts about which there may be questions, subject to an appropriate protective order.

The ESP compliance process proposed by AReM and CNE comports with the current reporting requirements applicable to ESPs that has been proposed by Staff. In addition, the AReM/CNE proposal is consistent with SB 1368, which only requires the Commission to verify ESP compliance with the EPS but does not require the Commission to review or pre-approve individual ESP contracts.<sup>11</sup> PG&E and NRDC/TURN/UCS/WPA fail to establish why the Commission should pre-review individual ESP contracts solely to determine whether an ESP is in compliance with the EPS. Accordingly, the Commission should reject such an unnecessary and unworkable compliance process.

Furthermore, as discussed in AReM's previous comments, there are several other reasons why it is neither necessary nor desirable to require ESPs to submit their contracts that are subject to the EPS to the Commission for up front review. For one thing, a contract pre-approval requirement is not needed to protect the customers of ESPs as such entities do not have captive customers and are not guaranteed rate recovery of their regulatory compliance costs. ESPs can be expected to take great care to ensure they are in compliance with the EPS and the

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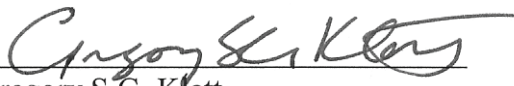
<sup>11</sup> See new P.U. Code § 8341(b).

Commission's implementing orders so as to avoid potentially significant monetary penalties and criminal sanctions. A contract pre-approval process would be burdensome for ESPs as such entities are not subject to the Commission-supervised AB 57 procurement planning process and are not required to secure the Commission's approval of their contracts for any other purposes. Lastly, such a process would be commercially impracticable for ESPs since they need to be nimble in the market and quickly secure incremental, discrete supplies at the time they sign up a customer for service in order to limit their cost risks.

### III. CONCLUSION

For the foregoing reasons, the Commission should adopt the ESP compliance process proposed by AReM and CNE and endorsed by Staff in the Final Workshop Report, and should not require ESPs to submit their contracts for up front review and approval in connection with the EPS.

Respectfully submitted,

  
Gregory S.G. Klatt

DOUGLASS & LIDDELL  
21700 Oxnard Street, Suite 1030  
Woodland Hills, California 91367  
Telephone: (818) 961-3002  
Facsimile: (818) 961-3004  
Email: [klatt@energyattorney.com](mailto:klatt@energyattorney.com)

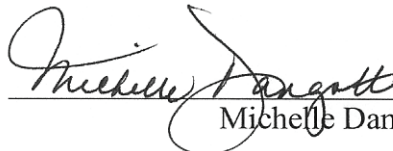
Attorneys for the  
**ALLIANCE FOR RETAIL ENERGY MARKETS**

Date: October 27, 2006

### **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing document on all parties of record in the above captioned proceeding by serving an electronic copy on their email addresses of record and, for those parties without an email address of record, by mailing a properly addressed copy by first-class mail with postage prepaid to each party on the Commission's official service list for this proceeding.

This Certificate of Service is executed on October 27, 2006, at Woodland Hills, California.

  
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Michelle Dangott

## **CALIFORNIA PUBLIC UTILITIES COMMISSION**

### **Service Lists - Proceeding: R0604009**

### **Appearance**

ADRIAN PYE  
ENERGY AMERICA, LLC  
ONE STAMFORD PLAZA, EIGHTH FLOOR  
263 TRESSER BLVD.  
STAMFORD, CT 06901

RICK C. NOGER  
PRAXAIR PLAINFIELD, INC.  
2711 CENTERVILLE ROAD, SUITE 400  
WILMINGTON, DE 19808

KEITH R. MCCREA  
ATTORNEY AT LAW  
SUTHERLAND, ASBILL & BRENNAN, LLP  
1275 PENNSYLVANIA AVE., N.W. STE. 800  
WASHINGTON, DC 20004-2415

KEVIN BOUDREAUX  
CALPINE POWER AMERICA-CA, LLC  
717 TEXAS AVENUE, SUITE 1000  
HOUSTON, TX 77002

E.J. WRIGHT  
OCCIDENTAL POWER SERVICES, INC.  
5 GREENWAY PLAZA, SUITE 110  
HOUSTON, TX 77046

ERIC GUIDRY  
WESTERN RESOURCE ADVOCATES  
2260 BASELINE ROAD, SUITE 200  
BOULDER, CO 80304

LARRY BARRETT  
AOL UTILITY CORP.  
PO BOX 60429  
COLORADO SPRINGS, CO 80960

DON STONEBERGER  
APS ENERGY SERVICES COMPANY, INC.  
400 E. VAN BUREN STREET, SUITE 750  
PHOENIX, AZ 85004

DARRELL SOYARS  
MANAGER-RESOURCE PERMITTING&STRATEGIC  
SIERRA PACIFIC RESOURCES  
6100 NEIL ROAD  
RENO, NV 89520-0024

DENNIS M.P. EHLING  
ATTORNEY AT LAW  
KIRKPATRICK & LOCKHART NICHOLSON GRAHAM  
10100 SANTA MONICA BLVD., 7TH FLOOR  
LOS ANGELES, CA 90067

GREGORY KOISER  
CONSTELLATION NEW ENERGY, INC.  
350 SOUTH GRAND AVENUE, SUITE 3800  
LOS ANGELES, CA 90071

MICHAEL MAZUR  
3 PHASES ENERGY SERVICES  
2100 SEPULVEDA BLVD., SUITE 37  
MANHATTAN BEACH, CA 90266



TIFFANY RAU  
POLICY AND COMMUNICATIONS MANAGER  
CARSON HYDROGEN POWER PROJECT LLC  
ONE WORLD TRADE CENTER, SUITE 1600  
LONG BEACH, CA 90831-1600

GREGORY S.G. KLATT  
DOUGLASS & LIDDELL  
411 E. HUNTINGTON DRIVE, STE. 107-356  
ARCADIA, CA 91006

RICHARD HELGESON  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
225 S. LAKE AVE., SUITE 1250  
PASADENA, CA 91101

DANIEL W. DOUGLASS  
ATTORNEY AT LAW  
DOUGLASS & LIDDELL  
21700 OXNARD STREET, SUITE 1030  
WOODLAND HILLS, CA 91367

PAUL DELANEY  
AMERICAN UTILITY NETWORK (A.U.N.)  
10705 DEER CANYON DRIVE  
ALTA LOMA, CA 91737

AKBAR JAZAYEIRI  
DIRECTOR OF REVENUE & TARIFFS  
SOUTHERN CALIFORNIA EDISON COMPANY  
2244 WALNUT GROVE AVE. ROOM 390  
ROSEMEAD, CA 91770

ANNETTE GILLIAM  
ATTORNEY AT LAW  
SOUTHERN CALIFORNIA EDISON COMPANY  
2244 WALNUT GROVE AVENUE  
ROSEMEAD, CA 91770

RONALD MOORE  
GOLDEN STATE WATER/BEAR VALLEY ELECTRIC  
630 EAST FOOTHILL BOULEVARD  
SAN DIMAS, CA 91773

SYMONE VONGDEUANE  
SEMPRA ENERGY SOLUTIONS  
101 ASH STREET, HQ09  
SAN DIEGO, CA 92101-3017

THEODORE ROBERTS  
ATTORNEY AT LAW  
SEMPRA GLOBAL  
101 ASH STREET, HQ 13D  
SAN DIEGO, CA 92101-3017

BILL LYONS  
CORAL POWER, LLC  
4445 EASTGATE MALL, SUITE 100  
SAN DIEGO, CA 92121

THOMAS DARTON  
PILOT POWER GROUP, INC.  
9320 CHESAPEAKE DRIVE, SUITE 112  
SAN DIEGO, CA 92123

STEVE RAHON  
DIRECTOR, TARIFF & REGULATORY ACCOUNTS  
SAN DIEGO GAS & ELECTRIC COMPANY  
8330 CENTURY PARK COURT, CP32C  
SAN DIEGO, CA 92123-1548

GLORIA BRITTON  
ANZA ELECTRIC COOPERATIVE, INC.  
58470 HWY 371  
PO BOX 391909  
ANZA, CA 92539

LYNELLE LUND  
COMMERCE ENERGY, INC.  
600 ANTON BLVD., SUITE 2000  
COSTA MESA, CA 92626

GEORGE HANSON  
DEPARTMENT OF WATER AND POWER  
CITY OF CORONA  
730 CORPORATION YARD WAY  
CORONA, CA 92880

TAMLYN M. HUNT  
ENERGY PROGRAM DIRECTOR  
COMMUNITY ENVIRONMENTAL COUNCIL  
26 W. ANAPAMU ST., 2/F  
SANTA BARBARA, CA 93101

LAD LORENZ  
V.P. REGULATORY AFFAIRS  
SOUTHERN CALIFORNIA GAS COMPANY  
601 VAN NESS AVENUE, SUITE 2060  
SAN FRANCISCO, CA 94102

DIANA L. LEE  
CALIF PUBLIC UTILITIES COMMISSION  
LEGAL DIVISION  
ROOM 4300  
505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3214

F. JACKSON STODDARD  
CALIF PUBLIC UTILITIES COMMISSION  
LEGAL DIVISION  
ROOM 5040  
505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3214

AUDREY CHANG  
NATURAL RESOURCES DEFENSE COUNCIL  
111 SUTTER STREET, 20TH FLOOR  
SAN FRANCISCO, CA 94104

EVELYN KAHL  
ATTORNEY AT LAW  
ALCANTAR & KAHL, LLP  
120 MONTGOMERY STREET, SUITE 2200  
SAN FRANCISCO, CA 94104

MICHAEL P. ALCANTAR  
ATTORNEY AT LAW  
ALCANTAR & KAHL, LLP  
120 MONTGOMERY STREET, SUITE 2200  
SAN FRANCISCO, CA 94104

SEEMA SRINIVASAN  
ATTORNEY AT LAW  
ALCANTAR & KAHL, LLP  
120 MONTGOMERY STREET, SUITE 2200  
SAN FRANCISCO, CA 94104

CHRISTOPHER J. WARNER  
PACIFIC GAS AND ELECTRIC COMPANY  
77 BEALE STREET  
SAN FRANCISCO, CA 94105

EDWARD G POOLE  
ANDERSON DONOVAN & POOLE  
601 CALIFORNIA STREET SUITE 1300  
SAN FRANCISCO, CA 94108

BRIAN T. CRAGG  
ATTORNEY AT LAW  
GOODIN, MACBRIDE, SQUERI, RITCHIE & DAY  
505 SANSOME STREET, SUITE 900  
SAN FRANCISCO, CA 94111

JAMES D. SQUERI  
ATTORNEY AT LAW  
GOODIN MACBRIDE SQUERI RITCHIE & DAY LLP  
505 SANSOME STREET, STE 900  
SAN FRANCISCO, CA 94111

JOSEPH M. KARP  
ATTORNEY AT LAW  
WINSTON & STRAWN LLP  
101 CALIFORNIA STREET  
SAN FRANCISCO, CA 94111

KAREN BOWEN  
ATTORNEY AT LAW  
WINSTON & STRAWN LLP  
101 CALIFORNIA STREET  
SAN FRANCISCO, CA 94111

LISA A. COTTLE  
ATTORNEY AT LAW  
WINSTON & STRAWN LLP  
101 CALIFORNIA STREET, 39TH FLOOR  
SAN FRANCISCO, CA 94111

JEFFREY P. GRAY  
DAVIS WRIGHT TREMAINE, LLP  
505 MONTGOMERY STREET, SUITE 800  
SAN FRANCISCO, CA 94111-6533

LARS KVALE  
CENTER FOR RESOURCE SOLUTIONS  
PRESIDIO BUILDING 97  
PO BOX 39512  
SAN FRANCISCO, CA 94129

BRIAN K. CHERRY  
DIRECTOR REGULATORY RELATIONS  
PACIFIC GAS AND ELECTRIC COMPANY  
PO BOX 770000 MC B10C  
SAN FRANCISCO, CA 94177-0001

ANDREA WELLER  
STRATEGIC ENERGY  
3130 D BALFOUR RD., SUITE 290  
BRENTWOOD, CA 94513

JENNIFER CHAMBERLIN  
STRATEGIC ENERGY, LLC  
3130 D BALFOUR ROAD, STE 290  
BRENTWOOD, CA 94513

KERRY HATTEVIK  
MIRANT CORPORATION  
696 WEST 10TH STREET  
PITTSBURG, CA 94565

AVIS KOWALEWSKI  
CALPINE CORPORATION  
3875 HOPYARD ROAD, SUITE 345  
PLEASANTON, CA 94588

WILLIAM H. CHEN  
CONSTELLATION NEW ENERGY, INC.  
2175 N. CALIFORNIA BLVD., SUITE 300  
WALNUT CREEK, CA 94596

J. ANDREW HOERNER  
REDEFINING PROGRESS  
1904 FRANKLIN STREET  
OAKLAND, CA 94612

JANILL RICHARDS  
DEPUTY ATTORNEY GENERAL  
CALIFORNIA ATTORNEY GENERAL'S OFFICE  
1515 CLAY STREET, 20TH FLOOR  
OAKLAND, CA 94702

CLIFF CHEN  
UNION OF CONCERNED SCIENTIST  
2397 SHATTUCK AVENUE, STE 203  
BERKELEY, CA 94704

GREGG MORRIS  
GREEN POWER INSTITUTE  
2039 SHATTUCK AVENUE, STE 402  
BERKELEY, CA 94704

R. THOMAS BEACH  
CROSSBORDER ENERGY  
2560 NINTH STREET, SUITE 213A  
BERKELEY, CA 94710

BARRY F. MCCARTHY  
ATTORNEY AT LAW  
MCCARTHY & BERLIN, LLP  
100 PARK CENTER PLAZA, SUITE 501  
SAN JOSE, CA 95113

C. SUSIE BERLIN  
ATTORNEY AT LAW  
MC CARTHY & BERLIN, LLP  
100 PARK CENTER PLAZA, SUITE 501  
SAN JOSE, CA 95113

JOHN JENSEN  
PRESIDENT  
MOUNTAIN UTILITIES  
PO BOX 205  
KIRKWOOD, CA 95646

MARY LYNCH  
CONSTELLATION ENERGY COMMODITIES GROUP  
2377 GOLD MEADOW WAY, STE. 100  
GOLD RIVER, CA 95670

ANDREW BROWN  
ATTORNEY AT LAW  
ELLISON, SCHNEIDER & HARRIS, LLP  
2015 H STREET  
SACRAMENTO, CA 95814

BRUCE MCLAUGHLIN  
BRAUN & BLAISING, P.C.  
915 L STREET, SUITE 1420  
SACRAMENTO, CA 95814

GREGGORY L. WHEATLAND  
ATTORNEY AT LAW  
ELLISON, SCHNEIDER & HARRIS, LLP  
2015 H STREET  
SACRAMENTO, CA 95814

JANE E. LUCKHARDT  
ATTORNEY AT LAW  
DOWNEY BRAND LLP  
555 CAPITOL MALL, 10TH FLOOR  
SACRAMENTO, CA 95814

JEDEDIAH J. GIBSON  
ATTORNEY AT LAW  
ELLISON, SCHNEIDER & HARRIS LLP  
2015 H STREET  
SACRAMENTO, CA 95814

WILLIAM W. WESTERFIELD, III  
ATTORNEY AT LAW  
ELLISON, SCHNEIDER & HARRIS L.L.P.  
2015 H STREET  
SACRAMENTO, CA 95814

DAN SILVERIA  
SURPRISE VALLEY ELECTRIC COOPERATIVE  
PO BOX 691  
ALTURAS, CA 96101

ROBERT W. MARSHALL  
GENERAL MANAGER  
PLUMAS-SIERRA RURAL ELECTRIC CO-OP  
73233 STATE ROUTE 70, STE A  
PORTOLA, CA 96122-7064

DONALD BROOKHYSER  
ALCANTAR & KAHL  
1300 SW FIFTH AVE., SUITE 1750  
PORTLAND, OR 97210

KYLE L. DAVIS  
PACIFICORP  
825 NE MULTNOMAH,  
PORTLAND, OR 97232

NATALIE HOCKEN, ESQ.  
PACIFICORP  
LLOYD CENTER TOWER  
825 NE MULTNOMAH  
PORTLAND, OR 97232

SHAY LABRAY  
MANAGER, REGULATORY  
PACIFICORP  
825 NE MULTNOMAH, SUITE 2000  
PORTLAND, OR 97232

KELLY NORWOOD  
RATES AND REGULATION DEPARTMENT  
AVISTA UTILITIES  
PO BOX 3727, MSC-29  
SPOKANE, WA 99220-3727

IAN CARTER  
POLICY COORDINATOR-NORTH AMERICA  
INTERNATIONAL EMISSIONS TRADING ASSN.  
350 SPARKS STREET, STE. 809  
OTTAWA, ON K1R 7S8  
CANADA

## Information Only

CAROL JOLLY  
PO BOX 585  
CHESTERFIELD, MA 01012

BRIAN M. JONES  
M. J. BRADLEY & ASSOCIATES, INC.  
47 JUNCTION SQUARE DRIVE  
CONCORD, MA 01742

RICHARD COWART  
REGULATORY ASSISTANCE PROJECT  
50 STATE STREET, SUITE 3  
MONTPELIER, VT 05602

DALLAS BURTRAW  
1616 P STREET, NW  
WASHINGTON, DC 20036

VERONIQUE BUGNION  
POINT CARBON  
205 SEVERN RIVER RD  
SEVERNA PARK, MD 21146

LISA DECKER  
COUNSEL  
CONSTELLATION ENERGY GROUP, INC.  
111 MARKET PLACE, SUITE 500  
BALTIMORE, MD 21202

CATHY S. WOOLLUMS  
MIDAMERICAN ENERGY HOLDINGS COMPANY  
106 EAST SECOND STREET  
DAVENPORT, IA 52801

BRIAN POTTS  
SUITE 700  
ONE SOUTH PINCKNEY STREET  
MADISON, WI 53703

JAMES ROSS  
RCS, INC.  
500 CHESTERFIELD CENTER, SUITE 320  
CHESTERFIELD, MO 63017

PAUL M. SEBY  
MCKENNA LONG & ALDRIDGE LLP  
1875 LAWRENCE STREET, SUITE 200  
DENVER, CO 80202

TIMOTHY R. ODIL  
MCKENNA LONG & ALDRIDGE LLP  
1875 LAWRENCE STREET, SUITE 200  
DENVER, CO 80202

KEVIN J. SIMONSEN  
ENERGY MANAGEMENT SERVICES  
646 EAST THIRD AVENUE  
DURANGO, CO 81301

KELLY POTTER  
APS ENERGY SERVICES COMPANY, INC.  
400 E. VAN BUREN STREET, SUITE 750  
PHOENIX, AZ 85260

BRIAN MCQUOWN  
RELIANT ENERGY  
7251 AMIGO ST., SUITE 120  
LAS VEGAS, NV 89119

CYNTHIA MITCHELL  
ENERGY ECONOMICS, INC.  
530 COLGATE COURT  
RENO, NV 89503

ELENA MELLO  
SIERRA PACIFIC POWER COMPANY  
6100 NEIL ROAD  
RENO, NV 89520

FRANK LUCHETTI  
NEVADA DIV. OF ENVIRONMENTAL PROTECTION  
901 S. STEWART ST., SUITE 4001  
CARSON CITY, NV 89701

RASHA PRINCE  
SAN DIEGO GAS & ELECTRIC  
555 WEST 5TH STREET, GT14D6  
LOS ANGELES, CA 90013

CURTIS L. KEBLER  
GOLDMAN, SACHS & CO.  
2121 AVENUE OF THE STARS  
LOS ANGELES, CA 90067

MICHAEL MCCORMICK  
CALIFORNIA CLIMATE ACTION REGISTRY  
515 S. FLOWER ST. SUITE 1640  
LOS ANGELES, CA 90071

HARVEY EDER  
PUBLIC SOLAR POWER COALITION  
1218 12TH ST., 25  
SANTA MONICA, CA 90401

TOM HAMILTON  
MANAGING PARTNER  
ENERGY CONCIERGE SERVICES  
321 MESA LILA RD  
GLENDALE, CA 91208

ROGER PELOTE  
THE WILLIAMS COMPANY, INC.  
12736 CALIFA STREET  
VALLEY VILLAGE, CA 91607

CASE ADMINISTRATION  
SOUTHERN CALIFORNIA EDISON COMPANY  
2244 WALNUT GROVE AVE., RM. 370  
ROSEMEAD, CA 91770

BARRY LOVELL  
15708 POMERADO RD., SUITE 203  
POWAY, CA 92064

ADRIAN E. SULLIVAN  
SEMPRA ENERGY  
REGULATORY LAW DEPARTMENT  
101 ASH STREET, HQ13D  
SAN DIEGO, CA 92101

DONALD C. LIDDELL, P.C.  
DOUGLASS & LIDDELL  
2928 2ND AVENUE  
SAN DIEGO, CA 92103

YVONNE GROSS  
REGULATORY POLICY MANAGER  
SEMPRA ENERGY  
HQ08C  
101 ASH STREET  
SAN DIEGO, CA 92103

JOHN LAUN  
APOGEE INTERACTIVE, INC.  
1220 ROSECRANS ST., SUITE 308  
SAN DIEGO, CA 92106

JOHN W. LESLIE  
ATTORNEY AT LAW  
LUCE, FORWARD, HAMILTON & SCRIPPS, LLP  
11988 EL CAMINO REAL, SUITE 200  
SAN DIEGO, CA 92130

JAN PEPPER  
CLEAN POWER MARKETS, INC.  
PO BOX 3206  
418 BENVENUE AVENUE  
LOS ALTOS, CA 94024

GLORIA D. SMITH  
ADAMS, BROADWELL, JOSEPH & CARDOZO  
601 GATEWAY BLVD., SUITE 1000  
SOUTH SAN FRANCISCO, CA 94080

MARC D. JOSEPH  
ADAMS BRADWELL JOSEPH & CARDOZO  
601 GATEWAY BLVD. STE 1000  
SOUTH SAN FRANCISCO, CA 94080

DIANE I. FELLMAN  
ATTORNEY AT LAW  
LAW OFFICES OF DIANE I. FELLMAN  
234 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102

HAYLEY GOODSON  
ATTORNEY AT LAW  
THE UTILITY REFORM NETWORK  
711 VAN NESS AVENUE, SUITE 350  
SAN FRANCISCO, CA 94102

MARCEL HAWIGER  
THE UTILITY REFORM NETWORK  
711 VAN NESS AVENUE, SUITE 350  
SAN FRANCISCO, CA 94102

MATTHEW FREEDMAN  
ATTORNEY AT LAW  
THE UTILITY REFORM NETWORK  
711 VAN NESS AVENUE, SUITE 350  
SAN FRANCISCO, CA 94102

MICHEL FLORIO  
ATTORNEYS AT LAW  
711 VAN NESS AVE., STE. 350  
SAN FRANCISCO, CA 94102

NINA SUETAKE  
ATTORNEY AT LAW  
THE UTILITY REFORM NETWORK  
711 VAN NESS AVE., STE 350  
SAN FRANCISCO, CA 94102

DAN ADLER  
DIRECTOR, TECH AND POLICY DEVELOPMENT  
CALIFORNIA CLEAN ENERGY FUND  
582 MARKET ST., SUITE 1015  
SAN FRANCISCO, CA 94104

DEVRA WANG  
NATURAL RESOURCES DEFENSE COUNCIL  
111 SUTTER STREET, 20TH FLOOR  
SAN FRANCISCO, CA 94104

KAREN TERRANOVA  
ALCANTAR & KAHL, LLP  
120 MONTGOMERY STREET, STE 2200  
SAN FRANCISCO, CA 94104

OLOF BYSTROM  
DIRECTOR, WESTERN ENERGY  
CAMBRIDGE ENERGY RESEARCH ASSOCIATES  
555 CALIFORNIA STREET, 3RD FLOOR  
SAN FRANCISCO, CA 94104

SHERYL CARTER  
NATURAL RESOURCES DEFENSE COUNCIL  
111 SUTTER STREET, 20TH FLOOR  
SAN FRANCISCO, CA 94104

STEPHANIE LA SHAWN  
PACIFIC GAS AND ELECTRIC COMPANY  
MAIL CODE B9A  
77 BEALE STREET, RM. 996B  
SAN FRANCISCO, CA 94105

NORMAN J. FURUTA  
FEDERAL EXECUTIVE AGENCIES  
333 MARKET STREET, 10TH FLOOR, MS 1021A  
SAN FRANCISCO, CA 94105-2195

CALIFORNIA ENERGY MARKETS  
517-B POTRERO AVENUE  
SAN FRANCISCO, CA 94110

ANN G. GRIMALDI  
MCKENNA LONG & ALDRIDGE LLP  
101 CALIFORNIA STREET, 41ST FLOOR  
SAN FRANCISCO, CA 94111

HOWARD V. GOLUB  
NIXON PEABODY LLP  
2 EMBARCADERO CENTER, STE. 2700  
SAN FRANCISCO, CA 94111

JANINE L. SCANCARELLI  
FOLGER LEVIN & KAHN LLP  
275 BATTERY STREET, 23RD FLOOR  
SAN FRANCISCO, CA 94111



JOSEPH F. WIEDMAN  
ATTORNEY AT LAW  
GOODIN MACBRIDE SQUERI RITCHIE & DAY,LLP  
505 SANSOME STREET, SUITE 900  
SAN FRANCISCO, CA 94111

MARTIN A. MATTES  
NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP  
50 CALIFORNIA STREET, 34TH FLOOR  
SAN FRANCISCO, CA 94111

CHRISTOPHER A. HILEN  
ATTORNEY AT LAW  
DAVIS WRIGHT TREMAINE LLP  
505 MONTGOMERY STREET, SUITE 800  
SAN FRANCISCO, CA 94111-6533

JEN MCGRAW  
CENTER FOR NEIGHBORHOOD TECHNOLOGY  
PO BOX 14322  
SAN FRANCISCO, CA 94114

LISA WEINZIMER  
CALIFORNIA ENERGY REPORTER  
PLATTS  
695 NINTH AVENUE, NO. 2  
SAN FRANCISCO, CA 94118

STEVEN MOSS  
SAN FRANCISCO COMMUNITY POWER COOP  
2325 3RD STREET, SUITE 344  
SAN FRANCISCO, CA 94120

SARA STECK MYERS  
ATTORNEY AT LAW  
122 28TH AVENUE  
SAN FRANCISCO, CA 94121

SHAUN ELLIS  
2183 UNION STREET  
SAN FRANCISCO, CA 94123

ARNO HARRIS  
RECURRENT ENERGY, INC.  
220 HALLECK ST., SUITE 220  
SAN FRANCISCO, CA 94129

DAREN CHAN  
PO BOX 770000, MAIL CODE B9A  
SAN FRANCISCO, CA 94177

ED LUCHA  
PROJECT COORDINATOR  
PACIFIC GAS AND ELECTRIC COMPANY  
PO BOX 770000, MAIL CODE: B9A  
SAN FRANCISCO, CA 94177

GRACE LIVINGSTON-NUNLEY  
ASSISTANT PROJECT MANAGER  
PACIFIC GAS AND ELECTRIC COMPANY  
PO BOX 770000 MAIL CODE B9A  
SAN FRANCISCO, CA 94177

JASMIN ANSAR  
PG&E  
MAIL CODE B24A  
PO BOX 770000  
SAN FRANCISCO, CA 94177

JONATHAN FORRESTER  
PG&E  
MAIL CODE N13C  
PO BOX 770000  
SAN FRANCISCO, CA 94177

SEBASTIEN CSAPO  
PROJECT MANAGER  
PACIFIC GAS AND ELECTRIC COMPANY  
MAIL CODE B9A  
PO BOX 770000  
SAN FRANCISCO, CA 94177

SOUMYA SASTRY  
PACIFIC GAS AND ELECTRIC COMPANY  
MAIL CODE B9A  
PO BOX 770000  
SAN FRANCISCO, CA 94177

VALERIE J. WINN  
PACIFIC GAS AND ELECTRIC COMPANY  
PO BOX 770000, B9A  
SAN FRANCISCO, CA 94177-0001

GREG BLUE  
140 MOUNTAIN PKWY.  
CLAYTON, CA 94517

ANDREW J. VAN HORN  
VAN HORN CONSULTING  
12 LIND COURT  
ORINDA, CA 94563

JOSEPH M. PAUL  
SENIOR CORPORATE COUNSEL  
DYNEGY, INC.  
2420 CAMINO RAMON, SUITE 215  
SAN RAMON, CA 94583

STEVEN S. SCHLEIMER  
CALPINE CORPORATION  
3875 HOPYARD ROAD, SUITE 345  
PLEASANTON, CA 94588

MONICA A. SCHWEBS, ESQ.  
BINGHAM MCCUTCHEN LLP  
SUITE 210  
1333 N. CALIFORNIA BLVD.  
WALNUT CREEK, CA 94596

MRW & ASSOCIATES, INC.  
1999 HARRISON STREET, SUITE 1440  
OAKLAND, CA 94612

CARLA PETERMAN  
1815 BLAKE ST., APT. A  
BERKELEY, CA 94703

REED V. SCHMIDT  
VICE PRESIDENT  
BARTLE WELLS ASSOCIATES  
1889 ALCATRAZ AVENUE  
BERKELEY, CA 94703

JOHN GALLOWAY  
UNION OF CONCERNED SCIENTISTS  
2397 SHATTUCK AVENUE, SUITE 203  
BERKELEY, CA 94704

CLYDE MURLEY  
CONSULTANT  
600 SAN CARLOS AVENUE  
ALBANY, CA 94706

EDWARD VINE  
LAWRENCE BERKELEY NATIONAL LABORATORY  
BUILDING 90-4000  
BERKELEY, CA 94720

RYAN WISER  
BERKELEY LAB  
MS-90-4000  
ONE CYCLOTRON ROAD  
BERKELEY, CA 94720

PHILLIP J. MULLER  
SCD ENERGY SOLUTIONS  
436 NOVA ALBION WAY  
SAN RAFAEL, CA 94903

CARL PECHMAN  
POWER ECONOMICS  
901 CENTER STREET  
SANTA CRUZ, CA 95060

KENNY SWAIN  
POWER ECONOMICS  
901 CENTER STREET  
SANTA CRUZ, CA 95060

MAHLON ALDRIDGE  
ECOLOGY ACTION  
PO BOX 1188  
SANTA CRUZ, CA 95060

ERIC WANLESS  
NATURAL RESOURCES DEFENSE COUNCIL  
111 SUTTER STREET, 20TH FLOOR  
SAN FRANCISCO, CA 95104

JOY A. WARREN  
ATTORNEY AT LAW  
MODESTO IRRIGATION DISTRICT  
PO BOX 4060  
MODESTO, CA 95352

RICHARD SMITH  
MODESTO IRRIGATION DISTRICT  
1231 11TH STREET  
MODESTO, CA 95352-4060

CHRISTOPHER J. MAYER  
MODESTO IRRIGATION DISTRICT  
1231 11TH STREET  
MODESTO, CA 95354

ROGER VANHOY  
MODESTO IRRIGATION DISTRICT  
1231 11TH STREET  
MODESTO, CA 95354

CLARK BERNIER  
RLW ANALYTICS  
1055 BROADWAY, SUITE G  
SONOMA, CA 95476

RICHARD MCCANN, PH.D  
M. CUBED  
2655 PORTAGE BAY, SUITE 3  
DAVIS, CA 95616

CAROLYN M. KEHREIN  
ENERGY MANAGEMENT SERVICES  
1505 DUNLAP COURT  
DIXON, CA 95620-4208

CALIFORNIA ISO  
LEGAL AND REGULATORY DEPARTMENT  
151 BLUE RAVINE ROAD  
FOLSOM, CA 95630

SAEED FARROKHPAY  
FEDERAL ENERGY REGULATORY COMMISSION  
110 BLUE RAVINE RD., SUITE 107  
FOLSOM, CA 95630

DAVID BRANCHCOMB  
BRANCHCOMB ASSOCIATES, LLC  
9360 OAKTREE LANE  
ORANGEVILLE, CA 95662

SCOTT TOMASHEFSKY  
NORTHERN CALIFORNIA POWER AGENCY  
180 CIRBY WAY  
ROSEVILLE, CA 95678-6420

ELLEN WOLFE  
RESERO CONSULTING  
9289 SHADOW BROOK PL.  
GRANITE BAY, CA 95746

AUDRA HARTMANN  
LS POWER GENERATION  
980 NINTH STREET, SUITE 1420  
SACRAMENTO, CA 95814

CURT BARRY  
717 K STREET, SUITE 503  
SACRAMENTO, CA 95814

STEVEN KELLY  
INDEPENDENT ENERGY PRODUCERS ASSN  
1215 K STREET, SUITE 900  
SACRAMENTO, CA 95814-3947

EDWARD J. TIEDEMANN  
ATTORNEY AT LAW  
KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
400 CAPITOL MALL, 27TH FLOOR  
SACRAMENTO, CA 95814-4416

BALWANT S. PUREWAL  
DEPARTMENT OF WATER RESOURCES  
3310 EL CAMINO AVE., LL-90  
SACRAMENTO, CA 95821

KAREN NORENE MILLS  
ATTORNEY AT LAW  
CALIFORNIA FARM BUREAU FEDERATION  
2300 RIVER PLAZA DRIVE  
SACRAMENTO, CA 95833

KAREN LINDH  
LINDH & ASSOCIATES  
7909 WALERGA ROAD, NO. 112, PMB119  
ANTELOPE, CA 95843

DENISE HILL  
DIRECTOR  
4004 KRUSE WAY PLACE, SUITE 150  
LAKE OSWEGO, OR 97035

KEVIN FOX  
STOEL RIVES LLP  
900 SW FIFTH AVENUE, SUITE 2600  
PORTLAND, OR 97204

ANNIE STANGE  
ALCANTAR & KAHL  
1300 SW FIFTH AVE., SUITE 1750  
PORTLAND, OR 97210

ALAN COMNES  
WEST COAST POWER  
3934 SE ASH STREET  
PORTLAND, OR 97214

MARK C. TREXLER  
TREXLER CLIMATE+ENERGY SERVICES, INC.  
529 SE GRAND AVE, M SUITE 300  
PORTLAND, OR 97214-2232

SAM SADLER  
OREGON DEPARTMENT OF ENERGY  
625 NE MARION STREET  
SALEM, OR 97301-3737

LISA SCHWARTZ  
SENIOR ANALYST  
ORGEON PUBLIC UTILITY COMMISSION  
PO BOX 2148  
SALEM, OR 97308-2148

JESUS ARREDONDO  
NRG ENERGY INC.  
4600 CARLSBAD BLVD.  
CARLSBAD, CA 99208

TIM HEMIG  
DIRECTOR  
NRG ENERGY  
4600 CARLSBAD BLVD.  
CARLSBAD, CA 99208

KAREN MCDONALD  
POWEREX CORPORATION  
1400,  
666 BURRAND STREET  
VANCOUVER, BC V6C 2X8  
CANADA

## State Service

JAMES LOEWEN  
CALIF PUBLIC UTILITIES COMMISSION  
RATEMAKING BRANCH  
320 WEST 4TH STREET SUITE 500  
LOS ANGELES, CA 90013

CHARLOTTE TERKEURST  
CALIF PUBLIC UTILITIES COMMISSION  
DIVISION OF ADMINISTRATIVE LAW JUDGES  
ROOM 5117  
505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3214

CHRISTINE S. TAM  
CALIF PUBLIC UTILITIES COMMISSION  
ELECTRICITY RESOURCES & PRICING BRANCH  
ROOM 4209  
505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3214

DONALD R. SMITH  
CALIF PUBLIC UTILITIES COMMISSION  
ELECTRICITY RESOURCES & PRICING BRANCH  
ROOM 4209  
505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3214

JACLYN MARKS  
CALIF PUBLIC UTILITIES COMMISSION  
DIVISION OF STRATEGIC PLANNING  
ROOM 5119  
505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3214

JUDITH IKLE  
CALIF PUBLIC UTILITIES COMMISSION  
ENERGY RESOURCES BRANCH  
ROOM 4012  
505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3214

KRISTIN RALFF DOUGLAS  
CALIF PUBLIC UTILITIES COMMISSION  
DIVISION OF STRATEGIC PLANNING  
ROOM 5119  
505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3214

MATTHEW DEAL  
CALIF PUBLIC UTILITIES COMMISSION  
ENERGY RESOURCES BRANCH  
AREA 4-A  
505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3214

MERIDETH STERKEL  
CALIF PUBLIC UTILITIES COMMISSION  
ENERGY RESOURCES BRANCH  
AREA 4-A  
505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3214

SARA M. KAMINS  
CALIF PUBLIC UTILITIES COMMISSION  
ENERGY RESOURCES BRANCH  
AREA 4-A  
505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3214

BILL LOCKYER  
STATE ATTORNEY GENERAL  
STATE OF CALIFORNIA, DEPT OF JUSTICE  
PO BOX 944255  
SACRAMENTO, CA 94244-2550

JONATHAN LAKRITZ  
CALIF PUBLIC UTILITIES COMMISSION  
DIVISION OF ADMINISTRATIVE LAW JUDGES  
ROOM 5020  
505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3214

JULIE A. FITCH  
CALIF PUBLIC UTILITIES COMMISSION  
DIVISION OF STRATEGIC PLANNING  
ROOM 5203  
505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3214

LAINIE MOTAMEDI  
CALIF PUBLIC UTILITIES COMMISSION  
DIVISION OF STRATEGIC PLANNING  
ROOM 5119  
505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3214

MEG GOTTSTEIN  
CALIF PUBLIC UTILITIES COMMISSION  
DIVISION OF ADMINISTRATIVE LAW JUDGES  
ROOM 2106  
505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3214

NANCY RYAN  
CALIF PUBLIC UTILITIES COMMISSION  
EXECUTIVE DIVISION  
ROOM 5217  
505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3214

THERESA CHO  
CALIF PUBLIC UTILITIES COMMISSION  
EXECUTIVE DIVISION  
ROOM 5207  
505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3214

GRANT A. ROSENBLUM  
STAFF COUNSEL  
CALIFORNIA ISO  
151 BLUE RAVINE ROAD  
FOLSOM, CA 95630

MICHAEL SCHEIBLE  
DEPUTY EXECUTIVE OFFICER  
CALIFORNIA AIR RESOURCES BOARD  
1001 I STREET  
SACRAMENTO, CA 95677

MEG GOTTSTEIN  
ADMINISTRATIVE LAW JUDGE  
PO BOX 210/21496 NATIONAL STREET  
VOLCANO, CA 95689

B. B. BLEVINS  
EXECUTIVE DIRECTOR  
CALIFORNIA ENERGY COMMISSION  
1516 9TH STREET, MS-39  
SACRAMENTO, CA 95814

DON SCHULTZ  
CALIF PUBLIC UTILITIES COMMISSION  
ELECTRICITY RESOURCES & PRICING BRANCH  
770 L STREET, SUITE 1050  
SACRAMENTO, CA 95814

KAREN GRIFFIN  
EXECUTIVE OFFICE  
CALIFORNIA ENERGY COMMISSION  
1516 9TH STREET, MS 39  
SACRAMENTO, CA 95814

LISA DECARLO  
STAFF COUNSEL  
CALIFORNIA ENERGY COMMISSION  
1516 9TH STREET MS-14  
SACRAMENTO, CA 95814

PIERRE H. DUVAIR  
CALIFORNIA ENERGY COMMISSION  
1516 NINTH STREET, MS-41  
SACRAMENTO, CA 95814